

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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BILL DRAFT 2005-RTz-19 [v.7] (05/03)

**(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
5/15/2006 12:13:03 PM**

Short Title: Stormwater Management 2006.

(Public)

Sponsors: .

Referred to:

1 AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II
2 STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT
3 WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.(a)** Disapproval of Certain Rules. – Pursuant to G.S. 150B-21.3
7 and S.L. 2003-229, the following rules, as adopted by the Environmental Management
8 Commission and approved by the Rules Review Commission on 17 November 2005,
9 are disapproved:

10 15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)

11 15A NCAC 2H.1015 (Urbanizing Area Definitions)

12 15A NCAC 2H.1016 (Urbanizing County Designations)

13 15A NCAC 2H.1017 (Application Schedule and Required Contents)

14 15A NCAC 2H.1018 (Post-Construction Model Practices)

15 15A NCAC 2H.1019 (Exceptions)

16 15A NCAC 2H.0126 (Stormwater Discharges)

17 15A NCAC 2H.0150 (Definitions)

18 15A NCAC 2H.0151 (Public Entity Designations)

19 15A NCAC 2H.0152 (Petitions)

20 15A NCAC 2H.0153 (Application Schedule and Required Contents)

21 15A NCAC 2H.0154 (Implementation Schedule)

22 15A NCAC 2H.0155 (Post-Construction Model Practices)

23 15A NCAC 2H.0156 (Exceptions)

24 **SECTION 1.(b)** Certain Rules Not Disapproved. – Notwithstanding
25 subsection (a) of this section, the following rules, as adopted by the Environmental
26 Management Commission and approved by the Rules Review Commission on 17
27 November 2005, are not disapproved. These rules become effective 1 July 2006 and

shall be implemented in conjunction with the provisions of this act. References in these rules to any rule that is disapproved pursuant this section shall be deemed to refer to the relevant provisions of this act and shall not be construed to give effect to the disapproved rule. To the extent that any provision of these rules is inconsistent with the provisions of this act, the provisions of this act control.

15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)

15A NCAC 2H.1017 (Application Schedule and Required Contents)

15A NCAC 2H.0126 (Stormwater Discharges)

15A NCAC 2H.0153 (Application Schedule and Required Contents)

SECTION 1.(c) Sunset of 2004 Phase II Stormwater Management Legislation. – Section 15 of S.L. 2004-163 reads as rewritten:

"SECTION 15. This act is effective when it becomes law and expires ~~1 October 2011~~ 1 July 2006."

SECTION 2. Definitions. – The following definitions apply to this act and its implementation:

- (1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).
- (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except for the definition of "Built-upon area", which is defined below.
- (5) "1-year, 24-hour storm" means 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (6) "BMP" means Best Management Practice.
- (7) "Built-upon area" means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (8) "Division" means the Division of Water Quality in the Department.
- (9) "New Development" means any project that increases the amount of built-upon area and for which a building permit, phased development plan approval, or site-specific development plan has been obtained on or after the date on which the requirements of this act becomes applicable to area in which the project is located. The applicable date depends on which public entity implements the requirements in the project area. If the Department implements the requirements, the date is the effective date of this act. If a public entity implements the

- requirements through delegation, the date is the date on which the delegation becomes effective. If a public entity implements these requirements pursuant to a permit issued by the Department, the date is the date on which the public entity implementing ordinance or regulations become effective.
- (10) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (11) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (12) "Redevelopment" means any rebuilding activity other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.
- (13) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (14) "Sensitive receiving waters" means any of the following:
- a. Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).
 - b. Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
 - c. Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.
- (15) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be

determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

- (16) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

SECTION 3.(a) New Development and Redevelopment in Unincorporated Areas of Counties. –

(a) New development or redevelopment located in the unincorporated area of a county shall comply with the standards set forth in Section 7 of this act beginning 1 July 2007 if the new development or redevelopment is located in:

- (1) An area that is designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census.
- (2) The unincorporated area of a county outside of a municipality designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census that:
 - a. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
 - b. Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
 - c. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (3) An area delineated pursuant to subsection (b) of this section.
- (4) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census; (ii) the area described in sub-subdivision b. of this subdivision; (iii) the area delineated pursuant to subsection (b) of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 4 of this act; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 5 of this act; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equals or exceeds fifty percent (50%) of the total geographic area of the county, unless the county has an actual population growth rate of less than the State population growth rate for the previous 10 years. For purposes of this subdivision, the stormwater programs administered by the Division are:
 - a. Water Supply Watershed (WS-I) – 15A NCAC 2B.0212.
 - b. Water Supply Watershed (WS-II) – 15A NCAC 2B.0214.

- 1 c. Water Supply Watershed (WS-III) – 15A NCAC 2B.0215.
- 2 d. Water Supply Watershed (WS-IV) – 15A NCAC 2B.0216.
- 3 e. High Quality Waters (Hqw) – 15A NCAC 2H.1006.
- 4 f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
- 5 g. The Coastal Stormwater Program 15A NCAC 2H.1005.
- 6 h. The Neuse River Nutrient Sensitive Waters (NSW) Stormwater
- 7 Management Program – 15A NCAC 2B.0235.
- 8 i. The Tar-Pamlico River Nutrient Sensitive (NSW) Stormwater
- 9 Management Program – 15A NCAC 2B.0258.
- 10 j. Other Environmental Management Commission Nutrient
- 11 Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.
- 12 (5) A county that contains an area that is designated as an urbanized area
- 13 under the 1990 or 2000 census by the Bureau of the Census that has an
- 14 actual population growth rate that exceeds 1.3 times the State
- 15 population growth rate for the previous 10 years or that has a projected
- 16 population growth rate that exceeds 1.3 times the projected State
- 17 population growth rate for the next 10 years.
- 18 (b) Delineation process. – The Commission shall delineate regulated coverage
- 19 areas as provided in this subdivision.
- 20 (1) Schedule. – The Commission shall implement the delineation process
- 21 in accordance with the schedule for review and revision of basinwide
- 22 water quality management plans as provided in G.S. 143-215.8B(c).
- 23 (2) Potential candidate coverage areas. – A potential candidate coverage
- 24 area is the unincorporated area of a county that is outside a
- 25 municipality designated as a regulated entity pursuant to subdivisions
- 26 (2) and (3) of Section 4 of this act that:
- 27 a. Extends one mile beyond the corporate limits of a municipality
- 28 with a population of less than 10,000 individuals.
- 29 b. Extends two miles beyond the corporate limits of a municipality
- 30 with a population of 10,000 or more individuals but less than
- 31 25,000 individuals.
- 32 c. Extends three miles beyond the corporate limits of a
- 33 municipality with a population of 25,000 or more individuals.
- 34 (3) Identification of candidate coverage areas. – The Commission shall
- 35 identify an area within a potential candidate coverage area described in
- 36 sub-subdivision b. of this subdivision as a candidate coverage area if
- 37 the discharge of stormwater within or from the unincorporated area has
- 38 the potential to adversely impact water quality. An adverse impact on
- 39 water quality includes any activity that violates water quality
- 40 standards, including, but not limited to, any activity that impairs
- 41 designated uses or that has a significant biological or habitat impact.
- 42 (4) Notice and comment on candidacy. – The Commission shall notify
- 43 each public entity that is located in whole or in part in a candidate
- 44 coverage area. After notification of each public entity, the Commission

1 shall publish a map of the unincorporated areas within the river basin
2 that have been identified as candidates for delineation as regulated
3 coverage areas. The Commission shall accept public comment on the
4 proposed delineation of a candidate coverage area as a regulated
5 coverage area for a period of not less than 30 days.

6 (5) Delineation of regulated coverage areas. – After review of public
7 comment, the Commission shall delineate regulated coverage areas.
8 The Commission shall delineate a candidate coverage area as a
9 regulated coverage area only if the Commission determines that the
10 discharge of stormwater within or from the candidate coverage area
11 either:

12 a. Adversely impacts water quality.

13 b. Results in a significant contribution of pollutants to sensitive
14 receiving waters, taking into account the effectiveness of other
15 applicable water quality protection programs. To determine the
16 effectiveness of other applicable water quality protection
17 programs, the Commission shall consider the water quality of
18 the receiving waters and whether the waters support the uses set
19 out in subsections (c), (d), and (e) of 15A NCAC 2B .0101
20 (Procedures for Assignment of Water Quality Standards –
21 General Procedures) and the specific classification of the waters
22 set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream
23 Classifications).

24 (6) Notice of delineation. – The Commission shall provide written notice
25 to each public entity that is located in whole or in part in a candidate
26 coverage area of its delineation determination. The notice shall state
27 the basis for the determination.

28 (c) Except as provided in this subdivision and Section 8 of this act, the
29 Commission shall administer and enforce the standards for new development and
30 redevelopment in the regulated coverage areas. To the extent that the new development
31 or redevelopment is located in a municipal planning jurisdiction, the municipality shall
32 administer and enforce the standards. A public entity may request that the Commission
33 delegate administration and enforcement of the stormwater management program to the
34 public entity as provided in Section 8 of this act.

35 **SECTION 3.(b)** New Development and Redevelopment in Non-Phase II
36 Incorporated Areas in Certain Counties. – New development or redevelopment located
37 in the incorporated areas of a county described in subdivisions (4) and (5) of subsection
38 (a) of this section, that are not designated as an urbanized area under the 1990 or 2000
39 census by the Bureau of the Census, shall comply with the standards set forth in Section
40 7 of this act beginning 1 July 2007. The Commission shall administer and enforce the
41 standards for new development and redevelopment unless the public entity requests that
42 the Commission delegate administration and enforcement of the stormwater
43 management program to the public entity as provided in Section 8 of this act.

1 **SECTION 4.** Designation of Regulated Entities. – A public entity that owns
2 or operates a municipal separate storm sewer system (MS4) may be designated as a
3 regulated entity through federal designation, through a State designation process, or
4 under a total maximum daily load (TMDL) implementation plan as provided in this
5 section.

6 (1) Federal designation. – A public entity that owns or operates a
7 municipal separate storm sewer system (MS4) may be designated as a
8 regulated entity pursuant to 40 Code of Federal Regulations § 122.32
9 (1 July 2003 Edition).

10 (2) State designation process. – The Commission shall designate a public
11 entity that owns or operates a municipal separate storm sewer system
12 (MS4) as a regulated entity as provided in this subdivision.

13 a. Designation schedule. – The Commission shall implement the
14 designation process in accordance with the schedule for review
15 and revision of basinwide water quality management plans as
16 provided in G.S. 143-215.8B(c).

17 b. Identification of candidate regulated entities. – The
18 Commission shall identify a public entity as a candidate for
19 designation as a regulated entity if the municipal separate storm
20 sewer system (MS4) either:

21 1. Discharges stormwater that has the potential to adversely
22 impact water quality. An adverse impact on water quality
23 includes any activity that causes or contributes to a
24 violation of water quality standards, including, but not
25 limited to, any activity that impairs designated uses or
26 that has a significant biological or habitat impact.

27 2. Serves a public entity that has not been designated
28 pursuant to subdivision (1) of this section and that has
29 either a population of more than 10,000 or more than
30 4,000 housing units and either a population density of
31 1,000 people per square mile or more or more than 400
32 housing units per square mile.

33 c. Notice and comment on candidacy. – The Commission shall
34 notify each public entity identified as a candidate for
35 designation as a regulated entity. After notification of each
36 public entity, the Commission shall publish a list of all public
37 entities within a river basin that have been identified as
38 candidates for designation. The Commission shall accept public
39 comment on the proposed designation of a public entity as a
40 regulated entity for a period of not less than 30 days.

41 d. Designation of regulated entities. – After review of the public
42 comment, the Commission shall make a determination on
43 designation for each of the candidate public entities. The
44 Commission shall designate a candidate public entity that owns

- 1 or operates a municipal separate storm sewer system (MS4) as a
2 regulated public entity only if the Commission determines
3 either that:
- 4 1. The public entity has an actual population growth rate
5 that exceeds 1.3 times the State population growth rate
6 for the previous 10 years.
 - 7 2. The public entity has a projected population growth rate
8 that exceeds 1.3 times the projected State population
9 growth rate for the next 10 years.
 - 10 3. The public entity has an actual population increase that
11 exceeds fifteen percent (15%) of its previous population
12 for the previous two years.
 - 13 4. The municipal separate storm sewer system (MS4)
14 discharges stormwater that adversely impacts water
15 quality.
 - 16 5. The municipal separate storm sewer system (MS4)
17 discharges stormwater that results in a significant
18 contribution of pollutants to receiving waters, taking into
19 account the effectiveness of other applicable water
20 quality protection programs. To determine the
21 effectiveness of other applicable water quality protection
22 programs, the Commission shall consider the water
23 quality of the receiving waters and whether the waters
24 support the uses set out in subsections (c), (d), and (e) of
25 15A NCAC 2B .0101 (Procedures for Assignment of
26 Water Quality Standards – General Procedures) and the
27 specific classification of the waters set out in 15A NCAC
28 2B .0300, et seq. (Assignment of Stream Classifications).
- 29 e. Notice of designation. – The Commission shall provide written
30 notice to each public entity of its designation determination. For
31 a public entity designated as a regulated entity, the notice shall
32 state the basis for the designation and the date on which an
33 application for a Phase II National Pollutant Discharge
34 Elimination System (NPDES) permit for stormwater
35 management must be submitted to the Commission.
- 36 f. Application schedule. – A public entity that has been designated
37 as a regulated entity pursuant to this subdivision must submit its
38 application for a Phase II National Pollutant Discharge
39 Elimination System (NPDES) permit for stormwater
40 management within 18 months of the date of notification.
- 41 (3) Designation under a total maximum daily load (TMDL)
42 implementation plan. – The Commission shall designate an owner or
43 operator of a small municipal separate storm sewer system (MS4) as a
44 regulated entity if the municipal separate storm sewer system (MS4) is

specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

SECTION 5. Petition Process. – A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

- (1) Connected discharge petition. – An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).
- (2) Adverse impact petition. – Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.
 - a. Petition review. – The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:
 1. The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater to sensitive receiving waters in an area with:

- (i) an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years; (ii) a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years; or (iii) an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.
 2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to sensitive receiving waters.
 3. The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.
- b. Types of evidence for required showing. – Petitioners may make the required showing by providing to the Commission the following information:
 1. Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.
 2. Scientific or technical literature that supports the sampling methods.
 3. Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.
 4. A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.
 5. For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or

- 1 discharge contributes pollutants for which the waters are
2 impaired or degraded.
- 3 6. For stormwater discharges to nonimpaired waters,
4 monitoring data that demonstrates that the owner or
5 operator of the municipal separate storm sewer system
6 (MS4) or the person who discharges stormwater is a
7 significant contributor of pollutants to the receiving
8 waters.
- 9 c. Water quality protection program offset. – If the petitioner
10 makes the required showing, the Commission shall review the
11 effectiveness of any existing water quality protection programs
12 that may offset the need to obtain a Phase II National Pollutant
13 Discharge Elimination System (NPDES) permit for stormwater
14 management. To determine the effectiveness of other applicable
15 water quality protection programs, the Commission shall
16 consider the water quality of the receiving waters and whether
17 the waters support the uses set out in subsections (c), (d), and
18 (e) of 15A NCAC 2B .0101 (Procedures for Assignment of
19 Water Quality Standards – General Procedures) and the specific
20 classification of the waters set out in 15A NCAC 2B .0300, et
21 seq. (Assignment of Stream Classifications). The Commission
22 may deny the petition if it finds that existing water quality
23 protection programs are adequate to address stormwater impacts
24 on sensitive receiving waters and to insure compliance with a
25 TMDL implementation plan.
- 26 (3) Petition administration. – The Commission shall process petitions in
27 the following manner:
- 28 a. The Commission shall only accept petitions submitted on
29 Department forms.
- 30 b. A separate petition must be filed for each municipal separate
31 storm sewer system (MS4) or discharge.
- 32 c. The Commission shall evaluate only complete petitions. The
33 Commission shall make a determination on the completeness of
34 a petition within 90 days of receipt of the petition, or it shall be
35 deemed complete. If the Commission requests additional
36 information, the petitioner may submit additional information;
37 and the Commission will determine, within 90 days of receipt
38 of the additional information, whether the information
39 completes the petition.
- 40 d. The petitioner shall provide a copy of the petition and a copy of
41 any subsequent additional information submitted to the
42 Commission to the chief administrative officer of the municipal
43 separate storm sewer system (MS4) or the person in control of
44 the discharge within 48 hours of each submittal.

- 1 e. The Commission shall post all petitions on the Division Web
2 site and maintain copies available for inspection at the
3 Division's office. The Commission shall accept and consider
4 public comment for at least 30 days from the date of posting.
- 5 f. The Commission may hold a public hearing on a petition and
6 shall hold a public hearing on a petition if it receives a written
7 request for a public hearing within the public comment period,
8 and the Commission determines that there is a significant public
9 interest in holding a public hearing. The Commission's
10 determination to hold a public hearing shall be made no less
11 than 15 days after the close of the public comment period. The
12 Commission shall schedule the hearing to be held within 45
13 days of the close of the initial public comment period and shall
14 accept and consider additional public comment through the date
15 of the hearing.
- 16 g. An additional petition for the same municipal separate storm
17 sewer system (MS4) or discharge received during the public
18 comment period shall be considered as comment on the original
19 petition. An additional petition for the same municipal separate
20 storm sewer system (MS4) or discharge received after the
21 public comment period ends and before the final determination
22 is made shall be considered incomplete and held pending a final
23 determination on the original petition.
- 24 1. If the Commission determines that the owner or operator
25 of the municipal separate storm sewer system (MS4) or
26 the person who discharges stormwater is required to
27 obtain a Phase II National Pollutant Discharge
28 Elimination System (NPDES) permit for stormwater
29 management, any petitions for that municipal separate
30 storm sewer system (MS4) or discharge that were held
31 shall be considered in the development of the Phase II
32 National Pollutant Discharge Elimination System
33 (NPDES) permit for stormwater management.
- 34 2. If the Commission determines that the owner or operator
35 of the municipal separate storm sewer system (MS4) or
36 the person who discharges stormwater is not required to
37 obtain a Phase II National Pollutant Discharge
38 Elimination System (NPDES) permit for stormwater
39 management, an additional petition for the municipal
40 separate storm sewer system (MS4) or discharge must
41 present new information or demonstrate that conditions
42 have changed in order to be considered. If new
43 information is not provided, the petition shall be returned
44 as substantially incomplete.

- 1 h. The Commission shall evaluate a petition within 180 days of
2 the date on which it is determined to be complete. If the
3 Commission determines that the owner or operator of the
4 municipal separate storm sewer system (MS4) or the person
5 who discharges stormwater is required to obtain a Phase II
6 National Pollutant Discharge Elimination System (NPDES)
7 permit for stormwater management, the Commission shall
8 notify the owner or operator of the municipal separate storm
9 sewer system (MS4) or the person who discharges stormwater
10 within 30 days of the requirement to obtain the permit. The
11 owner or operator of the municipal separate storm sewer system
12 (MS4) or the person who discharges stormwater must submit its
13 application for a Phase II National Pollutant Discharge
14 Elimination System (NPDES) permit for stormwater
15 management within 18 months of the date of notification.

16 **SECTION 6.** Permit Standards. – To obtain a Phase II National Pollutant
17 Discharge Elimination System (NPDES) permit for stormwater management, an
18 applicant shall develop, implement, and enforce a stormwater management plan
19 approved by the Commission that satisfies the six minimum control measures required
20 by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The evaluation
21 of the post-construction stormwater management measures required by 40 Code of
22 Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall be conducted as
23 provided in Section 7 of this act.

24 **SECTION 7.** Post-Construction Model Practices. –

25 (a) Permittees, delegated programs, and regulated entities must require
26 stormwater controls appropriate to a project's level of density as follows:

- 27 (1) Post-Construction Model Practices for Low Density Projects. – A low
28 density project contains no more than 12 percent built-upon area if the
29 project is within one-half mile of and draining to Class SA waters or
30 no more than 24 percent built-upon area if the project is located
31 elsewhere. Low density projects must use vegetated conveyances to
32 the maximum extent practicable to transport stormwater runoff from
33 the development. On-site stormwater treatment devices such as
34 infiltration areas, bioretention areas, and level spreaders may also be
35 used as added controls for stormwater runoff.

- 36 (2) Post-Construction Model Practices for High Density Projects. – A high
37 density project exceeds the low density thresholds of 12 percent
38 built-upon area if the project is within one-half mile of and draining to
39 Class SA waters or 24 percent built-upon area if the project is located
40 elsewhere. High density projects must use structural stormwater
41 management systems that will control and treat runoff from the first
42 one inch of rain unless the project is in a county that is subject to the
43 Coastal Area Management Act of 1974, in which case the project must
44 use structural stormwater management systems that will control and

1 treat runoff from the first one and one-half inches of rain. The
2 structural stormwater management system must also meet the
3 following design standards:

- 4 a. Draw down the treatment volume no faster than 48 hours, but
5 no slower than 120 hours.
- 6 b. Discharge the storage volume at a rate equal or less than the
7 pre-development discharge rate for the one-year, 24-hour storm.
- 8 c. Remove an 85% average annual amount of Total Suspended
9 Solids.
- 10 d. Meet the General Engineering Design Criteria set out in 15A
11 NCAC 02H .1008(c).

12 (b) Permittees, delegated programs, and regulated entities must require
13 built-upon areas to be located at least 30 feet landward of all perennial and intermittent
14 surface waters. For purposes of this section, a surface water shall be present if the
15 feature is shown on either the most recent version of the soil survey map prepared by
16 the Natural Resources Conservation Service of the United States Department of
17 Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle
18 topographic maps prepared by the United States Geologic Survey (USGS). Relief from
19 this requirement may be allowed when surface waters are not present in accordance
20 with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this
21 requirement may be pursued in accordance with subsection (a) of Section 9 of this act.

22 (c) Permittees, delegated program, and regulated entities must implement or
23 require a fecal coliform reduction program that controls, to the maximum extent
24 practicable, the sources of fecal coliform. At a minimum, the program shall include the
25 development and implementation of an oversight program to ensure proper operation
26 and maintenance of on-site wastewater treatment systems for domestic wastewater. For
27 municipalities, this program may be coordinated with local county health departments.

28 (d) Permittees, delegated programs and regulated entities must impose or require
29 recorded deed restrictions and protective covenants that ensure development activities
30 will maintain the project consistent with approved plans.

31 (e) Permittees, delegated programs, and regulated entities must implement or
32 require an operation and maintenance plan that ensures the adequate long-term
33 operation of the structural BMPs required by the program. The operation and
34 maintenance plan must require the owner of each structural BMP to submit a
35 maintenance inspection report on each structural BMP annually to the local program.

36 (f) Permittees, delegated programs, and regulated entities may allow cluster
37 development on a project-by-project basis only if the project meets all of the following
38 criteria:

- 39 (1) Overall density of the project meets the low density thresholds of no
40 more than 12 percent built-upon area for projects within one half mile
41 of and draining to Class SA waters and no more than 24 percent
42 built-upon area for all other projects.
- 43 (2) Built-upon areas, by design and location, minimize stormwater runoff
44 impact to the receiving waters, minimize concentrated stormwater

- 1 flow, maximize the use of sheet flow through vegetated areas, and
2 maximize the length of flow through vegetated areas.
- 3 (3) Development areas that have density that is greater than the overall
4 project area density are located in upland areas and, to the maximum
5 extent practicable, away from surface waters and drainageways.
- 6 (4) Areas other than built-upon areas within the project must remain
7 undeveloped. The undeveloped area may be conveyed to a property
8 owners association, a local government, or a conservation organization
9 for preservation as a park or greenway. The undeveloped area may
10 also be placed in a permanent conservation or farmland preservation
11 easement. A maintenance agreement for the undeveloped area must be
12 filed with the property deed.
- 13 (5) The project transports stormwater through vegetated conveyances to
14 the maximum extent practicable.
- 15 (g) For areas draining to Class SA waters, permittees, delegated programs, and
16 regulated entities must:
- 17 (1) Use BMPs that result in the highest degree of fecal coliform die off
18 and controls to the maximum extent practicable sources of fecal
19 coliform while still incorporating the stormwater controls required by
20 the project's density level.
- 21 (2) Implement a program to control the sources of fecal coliform to the
22 maximum extent practicable, including a pet waste management
23 component, which may be achieved by revising an existing litter
24 ordinance, and an on-site domestic wastewater treatment systems
25 component to ensure proper operation and maintenance of such
26 systems, which may be coordinated with local county health
27 departments.
- 28 (3) Prohibit new points of stormwater discharge to Class SA waters and
29 prohibit both increases in the volume of stormwater flow through
30 conveyances and increases in capacity of conveyances in existing
31 stormwater conveyance systems that drain to Class SA waters. Any
32 modification or redesign of a stormwater conveyance system within
33 the contributing drainage basin must not increase the net amount or
34 rate of stormwater discharge through existing outfalls to Class SA
35 waters. Diffuse flow of stormwater at a non-erosive velocity to a
36 vegetated buffer or other natural area capable of providing effective
37 infiltration of the runoff from the one-year, 24-hour storm shall not be
38 considered a direct point of stormwater discharge. Consideration shall
39 be given to soil type, slope, vegetation, and existing hydrology when
40 evaluating infiltration effectiveness.
- 41 (h) For areas draining to Trout Waters, permittees, delegated programs, and
42 regulated entities must:

- 1 (1) Use BMPs that avoid a sustained increase in the receiving water
- 2 temperature, while still incorporating the stormwater controls required
- 3 for the project's density level.
- 4 (2) Allow on-site stormwater treatment devices such as infiltration areas,
- 5 bioretention areas, and level spreaders as added controls.
- 6 (i) For areas draining to Nutrient Sensitive Waters, permittees, delegated
- 7 programs, and regulated entities must:
- 8 (1) Use BMPs that reduce nutrient loading, while still incorporating the
- 9 stormwater controls required for the project's density level. In areas
- 10 where the Department has approved a Nutrient Sensitive Water Urban
- 11 Stormwater Management Program, the provisions of that program
- 12 fulfill the nutrient loading reduction requirement. Nutrient Sensitive
- 13 Water Urban Stormwater Management Program requirements are
- 14 found in 15A NCAC 02B .0200.
- 15 (2) Implement a nutrient application management program for both
- 16 inorganic fertilizer and organic nutrients to reduce nutrients entering
- 17 waters of the State.

18 **SECTION 8.** Delegation. – A public entity that does not administer a Phase
19 II National Pollutant Discharge Elimination System (NPDES) permit for stormwater
20 management throughout the entirety of its planning jurisdiction and whose planning
21 jurisdiction includes a regulated coverage area under Section 3 of this act may submit a
22 stormwater management program for its regulated coverage area or a portion of its
23 regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c).
24 An ordinance or regulation adopted by a public entity shall at least meet and may
25 exceed the minimum requirements of this act and the six minimum control measures
26 required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). Two or
27 more public entities are authorized to establish a joint program and to enter into any
28 agreements that are necessary for the proper administration and enforcement of the
29 program. The resolution, memorandum of agreement, or other document that establishes
30 any joint program must be duly recorded in the minutes of the governing body of each
31 public entity participating in the program, and a certified copy of each resolution must
32 be filed with the Commission. The Commission shall review each proposed program
33 submitted to it to determine whether the submission is complete. Within 90 days after
34 the receipt of a complete submission, the Commission shall notify the public entity
35 submitting the program that it has been approved, approved with modifications, or
36 disapproved. The Commission shall only approve a program upon determining that its
37 standards equal or exceed those of this act and the six minimum control measures
38 required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). If the
39 Commission determines that any public entity is failing to administer or enforce an
40 approved stormwater management program, it shall notify the public entity in writing
41 and shall specify the deficiencies of administration and enforcement. If the public entity
42 has not taken corrective action within 30 days of receipt of notification from the
43 Commission, the Commission shall assume administration and enforcement of the

1 program until such time as the public entity indicates its willingness and ability to
2 resume administration and enforcement of the program.

3 **SECTION 9.(a)** Exceptions. – The Department or an appropriate local
4 authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant
5 exceptions from the 30-foot landward location of built-upon area requirement as well as
6 the deed restrictions and protective covenants requirement as follows:

7 (1) An exception may be granted if the application meets all the following
8 criteria:

- 9 a. Unnecessary hardships would result from strict application of
10 the act.
- 11 b. The hardships result from conditions that are peculiar to the
12 property, such as the location, size, or topography of the
13 property.
- 14 c. The hardships did not result from actions taken by the
15 petitioner.
- 16 d. The requested exception is consistent with the spirit, purpose,
17 and intent of this act; will protect water quality; will secure
18 public safety and welfare; and will preserve substantial justice.
19 Merely proving that the exception would permit a greater profit
20 from the property shall not be considered adequate justification
21 for an exception.

22 (2) Notwithstanding subdivision (1) of this section, exceptions shall be
23 granted in any of the following instances:

- 24 a. When there is a lack of practical alternatives for a road
25 crossing, railroad crossing, bridge, airport facility, or utility
26 crossing as long as it is located, designed, constructed, and
27 maintained to minimize disturbance, provide maximum nutrient
28 removal, protect against erosion and sedimentation, have the
29 least adverse effects on aquatic life and habitat, and protect
30 water quality to the maximum extent practicable through the
31 use of BMPs.
- 32 b. When there is a lack of practical alternatives for a stormwater
33 management facility; a stormwater management pond; or a
34 utility, including but not limited to, water, sewer or gas,
35 construction and maintenance corridor; as long as it is located
36 15 feet landward of all perennial and intermittent surface waters
37 and as long as it is located, designed, constructed, and
38 maintained to minimize disturbance, provide maximum nutrient
39 removal, protect against erosion and sedimentation, have the
40 least adverse effects on aquatic life and habitat, and protect
41 water quality to the maximum extent practicable through the
42 use of BMPs.
- 43 c. A lack of practical alternatives may be shown by demonstrating
44 that, considering the potential for a reduction in size,

configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.

(4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.

(5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

SECTION 9.(b) Exemption. – A municipality with a population of less than 1,000, including a municipality designated by the 1990 or 2000 census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

SECTION 10. Implementation Schedule. – The requirements of this act shall be implemented as follows:

(1) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.

(2) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued

(3) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

SECTION 11. Federal and State Development or Redevelopment Projects. – A federal or State agency may apply to the Commission for a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to all of the activities of the agency or that applies to a particular development or redevelopment project. The Commission shall have exclusive jurisdiction to establish stormwater management requirements with respect to a particular project that is not under the jurisdiction of a federal or State agency that holds a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to all of the activities of the agency or that applies to the particular development or redevelopment project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular development or redevelopment project, then the project is subject to the stormwater management requirements of this act as implemented by the Commission or by a local

1 government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the
2 implementation of this act.

3 **SECTION 12.** General Permit. – The Commission shall develop and issue a
4 Phase II National Pollutant Discharge Elimination System (NPDES) general permit for
5 stormwater management. The general permit requirements for post-construction
6 stormwater management measures required by 40 Code of Federal Regulations §
7 122.34(b)(5) (1 July 2003 Edition) shall require a permittee to meet the standards set out
8 in Section 7 of this act but shall not impose any requirement on the permittee that
9 exceeds the standards set out in Section 7 of this act. After the Commission has issued a
10 Phase II National Pollutant Discharge Elimination System (NPDES) general permit for
11 stormwater management, a public entity that has applied for a permit may submit a
12 notice of intent to be covered under the general permit to the Commission. The
13 Commission shall treat an application for a permit as an application for an individual
14 permit unless the applicant submits a notice of intent to be covered under a general
15 permit under this section.

16 **SECTION 13.** Additional Rule-Making. – The Environmental Management
17 Commission may adopt rules to replace the rules that are disapproved as provided in
18 subsection (a) of Section 1 of this act. If the Commission adopts rules pursuant to this
19 section, the rules shall be substantively identical to the provisions of Sections 2 through
20 11 of this act. The Commission may amend the rules referenced in subsection (b) of
21 Section 1 of this act to provide a complete and consistent regulatory scheme. If the
22 Commission amends rules pursuant to this section, the amended rules shall be
23 substantively identical to the rules referenced in subsection (b) of Section 1 of this act.
24 The Commission may reorganize or renumber any of the rules to which this section
25 applies as its discretion. Rules adopted pursuant to this section are not subject to
26 G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall
27 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written
28 objections had been received as provided by G.S. 150B-21.3(b2).

29 **SECTION 14.(a)** County Stormwater Control Ordinances. – Article 23 of
30 Chapter 153A is amended by adding a new section to read:

31 **"§ 153A-453. Stormwater control.**

32 A county may adopt and enforce a stormwater control ordinance as authorized by
33 Part 1 of Article 21 of Chapter 143 of the General Statutes or by any other provision of
34 law. A stormwater control ordinance adopted pursuant to this section must at least meet
35 all of the minimum requirements of Part 1 of Article 21 of Chapter 143 of the General
36 Statutes or other provision of law."

37 **SECTION 14.(b)** City Stormwater Control Ordinances. – Part 8 of Article
38 19 of Chapter 160A is amended by adding a new section to read:

39 **"§ 160A-459. Stormwater control.**

40 A city may adopt and enforce a stormwater control ordinance as authorized by Part 1
41 of Article 21 of Chapter 143 of the General Statutes or by any other provision of law. A
42 stormwater control ordinance adopted pursuant to this section must at least meet all of
43 the minimum requirements of Part 1 of Article 21 of Chapter 143 of the General
44 Statutes or other provision of law."

SECTION 15. Construction of Act. –

- (1) Nothing in this act shall be construed to limit, expand, or otherwise alter the authority of the Environmental Management Commission or any unit of local government to adopt stormwater management requirements that exceed the requirements of this act.
- (2) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3 (1 July 2003 Edition), including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this act.
- (3) This act shall not be construed to affect any delegation of any power or duty by the Commission to the Department or subunit of the Department.
- (4) This act shall not be construed to affect any vested right to development under any provision of statutory or common law.

SECTION 16. Certain Provisions of Act not Codified; Set Out as Note. –

Except for Sections 17.(a) and 17.(b) of this act, notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate.

SECTION 17. Effective Date. – This act becomes effective 1 July 2006.

Sections 2 through 11 of this act expire when permanent rules to replace those sections have become effective as provided by Section 13 of this act.